

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7635

Petition of Central Vermont Public Service Corporation )  
("CVPS") for an amended Certificate of Public Good, )  
pursuant to 30 V.S.A. § 248, authorizing the )  
construction of a new 46 kV electrical substation, and )  
the reconstruction of an existing substation containing )  
46 kV/12.47 kV distribution facilities and step-up )  
facilities for hydro generation, located on Maple Street )  
and Smead Road in Salisbury, Vermont )

Technical Hearing  
at Montpelier, Vermont  
August 17, 2011

Order entered: 11/23/2011

HEARING OFFICER: Thomas Knauer, Utilities Analyst

APPEARANCES: Geoffrey Commons, Esq.  
for Vermont Department of Public Service

Morris L. Silver, Esq.  
for Central Vermont Public Service Corporation

George and Barbara Sack  
pro se

**I. INTRODUCTION**

This case involves a motion filed by Central Vermont Public Service Corporation ("CVPS") on June 27, 2011, for amendment of a Certificate of Public Good ("CPG") issued by the Public Service Board ("Board") on March 3, 2011, pursuant to 30 V.S.A. § 248.<sup>1</sup> The proposed amendment of the CPG is to account for changes to the Smead Road transmission substation design and the need for blasting at the Smead Road transmission substation site

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1. The March 3, 2011, Order and CPG, authorize CVPS: (1) to construct a new 46 kV electrical transmission substation located off Smead Road in Salisbury, Vermont; and (2) to reconstruct an existing substation on Maple Street in Salisbury, Vermont, containing 46 kV/4.16 kV distribution facilities and generation step-up facilities for a hydroelectric ("hydro") generation facility.

discovered subsequent to the issuance of the CPG. In this Proposal for Decision, I recommend that the Board grant the motion and issue an amended CPG, subject to several conditions.

## **II. PROCEDURAL HISTORY**

On June 18, 2010, CVPS filed a petition requesting a CPG pursuant to 30 V.S.A. § 248 authorizing construction of the proposed project.

Board staff convened a prehearing conference August 6, 2010, a site visit and public hearing on September 2, 2010, and a technical hearing on October 25, 2010.

On March 3, 2011, the Board issued a CPG to CVPS authorizing construction of the proposed project.

On April 29, 2011, George and Barbara Sack, landowners whose property adjoins the CVPS property on Smead Road and who share in common with CVPS a right-of-way to access their property, filed, via facsimile, comments on the Smead Road transmission substation project. The Sacks filed ten more letters regarding the project between May 19 and August 16, 2011.

Between May 3 and August 16, 2011, CVPS filed seven letters in response to filings made by the Sacks. CVPS's May 19, 2011, filing includes a description of changes to the Smead Road transmission substation and a blasting plan developed in response to the discovery of ledge at the project site.

On June 9, 2011, the Clerk of the Board issued a memorandum stating that this matter had been referred back to the Hearing Officer to address the Sacks' concerns and the proposed project updates. The memorandum directed CVPS to file for an amendment to its CPG, pursuant to Board Rule 5.408, due to the potential for significant impacts with respect to 30 V.S.A. § 248(b)(5) as a result of the proposed project updates.

On June 27, 2011, CVPS filed a Motion for Amendment of the CPG to account for: (1) changes to the Smead Road transmission substation design; and (2) the need for blasting at the Smead Road transmission substation site. CVPS's filing included supplemental testimony of Timothy Upton, Manager of Environmental Affairs at CVPS, site plans, a blasting plan, and other documents.

On July 12, 2011, the Sacks filed a motion to intervene in this docket pursuant to Board Rule 2.209(A). On July 25, 2011, the Hearing Officer issued an Order granting the Sacks' motion. The party status granted to the Sacks was limited to the issues of blasting and aesthetics raised by the Motion to Amend.

On July 18, 2011, the Department of Public Service ("Department") filed comments on the Motion to Amend. The Department stated that it does not oppose CVPS's Motion, and that the changes proposed for the Smead Road substation may be intended to ameliorate impacts to the Sacks.

On July 18, 2011, the Sacks filed comments on the Motion to Amend. The Sacks requested that a hearing be held regarding blasting at the substation site. The Sacks asserted that damage to their 550-foot-deep well is possible, that they have previously lost the well as a result of blasting, and that loss of their well would be much more than a minor inconvenience.

On July 29, 2011, the Clerk of the Board issued notice that a Technical Hearing would be held on August 17, 2011. On the same date, the Hearing Officer issued a memorandum to the parties that included a prehearing schedule for discovery and the filing of any testimony from the Sacks.

On August 17, 2011, a Technical Hearing was held in the Board's Hearing Room. CVPS's prefiled testimony and evidence was admitted into the evidentiary record. No other party submitted prefiled testimony or evidence.

On September 1, 2011, CVPS filed responses to Hearing Officer record requests made at the August 17 Technical Hearing.

On September 14, 2011, CVPS filed as its Brief a Revised Proposal for Decision.

On September 21, 2011, the Sacks filed a Reply Brief.

On September 28, 2011, CVPS filed a Reply Brief.

On September 28, 2011, the Department filed a letter in lieu of a Reply Brief. The Department states that it does not oppose the Motion to Amend the CPG.

### **III. FINDINGS**

Based on the substantial evidence of record, I hereby report the following findings to the Board in accordance with 30 V.S.A. § 8.

1. Modifications to the Smead Road transmission substation include: (1) changes to the configuration of the substation yard and access drive; and (2) blasting activities required to remove ledge from the substation site. Upton pf. supp. at 1-2.
2. CVPS proposes to locate the Smead Road transmission substation approximately 20 feet southeast of the previously approved location. Grading around the substation yard will change slightly. The new grading will be at a slope of 2:1. Upton pf. supp. at 2; exh. CVPS-JRF#10A - REVISED 8/29/11.
3. As a result of relocating the substation, the impact to the adjacent Class II wetland buffer will be reduced from 5,557 square feet to 3,500 square feet, the overall area of tree clearing will be reduced from 55,196 square feet to 49,095 square feet, and overall construction limits will be reduced from 55,426 square feet to 39,903 square feet. Relocation of the substation will also obviate the need to relocate the centerline of the existing driveway. Upton pf. supp. at 2.
4. The reduction in tree clearing will retain additional screening between the Smead Road transmission substation and the Sack residence, located to the northwest. Upton pf. supp. at 5; exh. CVPS-JRF#16 Cut/Fill Drawing.
5. Extensive deposits of ledge were discovered upon site clearing. Blasting will be required to achieve the necessary grades in and around the substation yard. Upton pf. supp. at 1.
6. CVPS has retained Maine Drilling and Blasting, Inc. ("MDB"), to perform all blasting-related activities. Upton pf. supp. at 1.
7. MDB will avoid excessive movement of rock during blasting events through the use of blasting mats and drilling. Preliminary estimates indicate that blasting for the project may require drilling of 400 to 500 holes. The maximum depth of blasting will be approximately 15 feet. Upton pf. supp. at 1; CVPS record-request response A1.
8. CVPS will offer pre-blast surveys to adjacent landowners. The pre-blast survey will establish the existing condition of structures on adjacent properties. MDB will give appropriate

notice of such surveys, arrange appointments, and document survey findings. Exh. CVPS-JRF#16 Pre-Blast Survey Protocol.

9. It is unlikely that the effects of blasting will reach beyond the construction site. Mitigation can be required for any impacts to nearby existing water supplies. Upton pf. supp. at 3.

10. No blasting will take place within the adjacent Class II wetland or its 50-foot upland buffer. Blasting will not have a significant impact on the Class II wetland, and will not require an amendment to Conditional Use Determination #2010-032. Blasting will not result in ground disturbance that will adversely affect nearby historic sites. Upton pf. supp. at 2-4; exh. CVPS-TOU-12.

11. MDB will follow all local, state and federal regulations related to the transportation and use of explosives. Emphasis will be placed on the safe and efficient removal of rock without impact to surrounding structures. All blasters will be licensed in the State of Vermont. Exh. CVPS-JRF-16 at 3-4.

#### **IV. POSITIONS OF THE PARTIES**

The Sacks' filing of September 21, 2011, covers three broad topics: protection of their water supply from project-related blasting; concerns about mosquito control; and the use of snow fence at the project site. The Sacks state that they do not expect their water supply to be disrupted by project blasting, and that they do not believe they should have to sue CVPS in the event that their water supply is disrupted. Additionally, the Sacks pose a series of questions related to pre-blast water supply testing as well as post-blast procedures in the event that their water supply is disrupted. Regarding mosquito control, the Sacks assert that the Brandon-Salisbury-Leicester area is a notorious breeding zone for mosquitoes. The Sacks represent that a silt pond related to the proposed project will result in a constant pool of standing water, and thus a prime mosquito habitat, and questions how CVPS will deal with this problem. Regarding snow fencing, the Sacks state a concern about snow drifting across the road in areas where vegetation and tree canopy have been removed for the project. The Sacks refer to Conditional Use

Determination #2010-032 ("CUD"), which requires the installation of a continuous line of snow fence along the limit of disturbance.

The CVPS filing of September 28, 2011, addresses the questions and topics raised in the Sacks' September 21 filing. CVPS proposes that the following condition, based largely on the blasting-related conditions included in the May 31, 2011, CPG issued in Docket 7628, *Petition of Green Mountain Power, et al. ("Lowell")*, be included in any amended CPG.

All blasting shall be in accordance with the approved Blasting Plan subject to the following conditions:

- a. Blasting associated with construction of the proposed project shall be minimized to the extent practicable and performed only during the hours of 9:00 A.M.- 5:00 P.M., Monday-Friday, with the exception of State holidays.
- b. All blasting shall be carried out by licensed and certified blasting technicians. All blasting will be performed in accordance with any and all applicable laws and regulations, including, but not limited to, U.S. Department of Interior Rules 816.61-68 and 817.61-68 and the Blasting Guidance Manual, Office of Surface Mining, Reclamation and Enforcement, U.S. Department of Interior to limit peak particle velocity and ground vibration to safe levels. Noise and air blast effects shall be limited through application of proper techniques and blasting mats will be used where needed to limit the occurrence of flyrock.
- c. Prior to performing any blasting for the proposed project, CVPS shall offer a pre-blast survey of any residential or agricultural water sources within 750 feet of the blasting site and will provide information to affected landowners to address concerns related to blasting. The pre-blast surveys will include a "pump test" to measure the yield of the subject well and collect information on water quality.
- d. In the event surrounding landowners express concern regarding the impacts of blasting on wells or other structures on their property, the Petitioners shall perform evaluations to determine if any damage has occurred as a result of blasting activities and, if so, remediate any such damage.

CVPS asserts that the inclusion of the proposed condition, and the Board's continued jurisdiction over the implementation of the proposed project and blasting plan, should be sufficient to address the Sacks' concerns.

CVPS represents that accepted industry standard would be to offer pre-blast surveys to neighboring structures within a 250-foot radius of the blasting site, and that there is no technical justification for expanding this area for this project. However, because the 250-foot radius would not include the Sacks' residence, CVPS states that it would not object to offering pre-blast surveys to neighbors within a 750-foot radius of the blasting site, which would incorporate the Sacks' residence as well as those of other neighbors to the north and south.

With respect to mosquito control, CVPS states that the settling pond is a temporary feature that is designed to control stormwater runoff from the construction site, and that the settling pond will not exist after the substation is built. CVPS represents that final grading of the area will include a sediment control basin that will cover an area of approximately 2,088 square feet, and will be a maximum of two feet deep at its center. CVPS asserts that this sediment control basin is smaller in size than the 2,295 square foot Class 3 wetland that existed prior to construction, that the basin will serve the same function as the Class 3 wetland, and that the basin should not result in any significant change in mosquito populations in the area. CVPS notes that the stream that runs between the project site and the Sack residence is part of a 500-acre contiguous wetland complex as measured on the Vermont Significant Wetland Inventory.

On the use of snow fencing, CVPS asserts that all construction fencing and sediment barriers, as required under the CUD, will be installed, maintained, and removed. CVPS states that its understanding of the purpose of the snow fencing called for in the CUD is to delineate the limits of disturbance and not to manage snow.

## **V. DISCUSSION**

On May 31, 2011, the Board issued a CPG in *Lowell* that includes the following blasting-related conditions:

35. Blasting associated with construction of the proposed project shall be minimized to the extent practicable and performed only during the hours of 9:00 A.M.- 5:00 P.M., Monday-Friday, with the exception of State holidays.
36. All blasting shall be carried out by licensed and certified blasting technicians. All blasting will be performed in accordance with any and all applicable laws and regulations, including, but not limited to, U.S. Department of Interior Rules 816.61-68 and 817.61-68 and the Blasting Guidance Manual, Office of

Surface Mining, Reclamation and Enforcement, U.S. Department of Interior to limit peak particle velocity and ground vibration to safe levels. Noise and air blast effects shall be limited through application of proper techniques and blasting mats will be used where needed to limit the occurrence of flyrock.

37. Prior to performing any blasting for the proposed project, the Petitioners shall develop and file for Board approval, a blasting plan that includes a preconstruction survey of any residential or agricultural water sources within one-half mile of any proposed blasting site, and will arrange for a public information session with surrounding landowners to address concerns related to blasting. Parties with standing on this issue will have two weeks, from the date this plan is filed with the Board, to comment on the plan. The Petitioners cannot commence any blasting activities until the plan is approved.
38. In the event surrounding landowners express concern regarding the impacts of blasting on wells or other structures on their property, the Petitioners shall perform evaluations to determine if any damage has occurred as a result of blasting activities and, if so, remediate any such damage.

I recommend that the Board adopt these conditions, with slight modifications, for the Smead Road transmission substation project. Condition 37 requires the Petitioners to develop a blasting plan for Board approval. CVPS has already developed this plan and filed it with the Motion for Amendment. Thus, parties have had an opportunity to respond to the plan through testimony and cross-examination. I recommend that the Board require CVPS to modify its blasting plan to include a preconstruction survey of any residential or agricultural water source within one-half of a mile of the blasting site, and to arrange for a public information session with surrounding landowners to address concerns related to blasting.

CVPS asserts that there is no technical justification for offering pre-blast surveys beyond a 250-foot radius from the blasting site. However, CVPS also proposes to perform all blasting "in accordance with any and all applicable laws and regulations, including, but not limited to, U.S. Department of Interior Rules 816.61-68 and 817.61-68 and the Blasting Guidance Manual, Office of Surface Mining, Reclamation and Enforcement, U.S. Department of Interior to limit peak particle velocity and ground vibration to safe levels." Both 30 C.F.R. § 816.62 and the Blasting Guidance Manual require operators to notify, in writing, residents or owners of dwellings or other structures within one-half mile of the permit area of the opportunity to request a pre-blast survey. CVPS has not provided any technical support for a pre-blast survey area



limited to a 250-foot radius. I recommend that the Board conclude that the one-half mile survey area, as contemplated in 30 C.F.R. § 816.62<sup>2</sup> and the Blasting Guidance Manual,<sup>3</sup> as well as considerable Board precedent, is appropriate in this case.

Condition 38 from *Lowell* relates to landowner concerns regarding impacts to not only wells but also to other structures on their property. Accordingly, I recommend that the Board modify CVPS's proposed pre-construction survey requirement to include not only water sources but also other structures, and instruct CVPS to include this requirement in its modified blasting plan.

With regard to the pre-blast survey of water sources, I recommend that the Board require CVPS to include tests that will measure both the quantity and quality of water supplied. Similarly, any post-blast testing should include tests that measure both the quantity and quality of a water supply. With respect to the timing of any post-blast surveys, CVPS asserts that any blasting-related impacts would be expected to manifest themselves immediately following blasting, and thus post-blast surveys could be done shortly after the completion of blasting activities. The Sacks represent that impacts to water sources may not be known for a year or more, and question how they will be protected if their water supply diminishes after some time.

The Sacks' concerns are legitimate. Accordingly, the blasting-related conditions do not contain any limitations, with regard to number or timing, on the post-blast evaluations. While it stands to reason that blasting-related impacts would be manifested in the near term, if in the future a neighboring resident or landowner were to make a reasonable representation that impacts to their water supply were a result of blasting for this project, the Board's continuing jurisdiction over the project would ensure that the impacts were investigated and any necessary remediation implemented.

The CVPS Blasting Plan does not specify the manner in which nearby property owners will be notified about the pre-blast surveys, stating only that "[a]ppropriate notices will be

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2. See <http://www.gpo.gov/fdsys/pkg/CFR-2010-title30-vol3/xml/CFR-2010-title30-vol3-sec816-62.xml>

3. See <http://arblast.osmre.gov/downloads/OSM%20Reports/BGM%201.pdf>

given."<sup>4</sup> In *Lowell*, as well as in Docket 7508, *Petition of Georgia Mountain Community Wind, LLC* ("*Georgia*"), the Board found similar language to be insufficient. In those cases, the Board directed the petitioners to, at a minimum, send a certified letter, return receipt requested, to each property owner within one-half mile of the project site. Each letter was to explain why pre- and post-blast surveys of water sources and other structures were being offered and provide contact information for a person who could answer questions that property owners may have regarding both the notices and the surveys. Copies of the return receipts were to be filed with the Board.<sup>5</sup> Consistent with its decisions in both *Georgia* and *Lowell*, I recommend that the Board direct CVPS to comply with these requirements when giving notification of pre-blast surveys to property owners.

## **VI. CONCLUSION**

The relocation of the Smead Road transmission substation 20 feet southeast of the previously approved location has resulted in a project that will require a smaller construction area and will reduce the impact to natural resources, including currently forested areas and an adjacent Class II wetland buffer. The relocation will also result in increased screening to the northwest of the substation.

With the blasting-related conditions proposed above, the modified Project will not result in adverse impacts, will continue to satisfy the criteria of Section 248, and will promote the general good of the State.

Therefore, I recommend that the Board find that the proposed modifications to the Project, in accordance with the evidence presented in this proceeding, will promote the general good of the State of Vermont in accordance with 30 V.S.A. § 248, and issue an amended Certificate of Public Good for construction of the proposed project with the conditions set forth in the proposed Order and CPG, below.

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4. Exh. CVPS-JRF-16 at 3.

5. *Petition of Georgia Mountain Community Wind, LLC*, Docket 7508, Order of 4/11/11 at 5, and *Petition of Green Mountain Power, et al.*, Docket 7628, Order of 7/19/11 at 17.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 10th day of November, 2011.

s/ Thomas Knauer  
Thomas Knauer  
Hearing Officer

## **VII. BOARD DISCUSSION**

On November 4, 2011, the Department filed a letter supporting adoption of the Proposal for Decision, and stating that the Department does not request oral argument.

On November 7, 2011, CVPS filed a letter supporting adoption of the Proposal for Decision, and stating that CVPS does not request oral argument at this time. CVPS recommends that the Board consider convening a workshop to discuss issues associated with blasting.

No other party filed comments on the Proposal for Decision.

We adopt the Hearing Officer's findings, conclusions and recommendations. Therefore, we approve the proposed project and issue an Amended CPG for construction of the proposed project with the conditions set forth in the Order and CPG, below.

## **VIII. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board ("Board") of the State of Vermont that:

1. The findings, conclusions, and recommendations of the Hearing Officer are adopted.
2. The proposed Smead Road transmission substation, as amended by Central Vermont Public Service Corporation's filing of June 27, 2011, constructed and operated in accordance with the evidence and plans submitted in this proceeding, will promote the general good of the State of Vermont pursuant to 30 V.S.A. § 248, and an Amended Certificate of Public Good to that effect shall be issued in this matter.
3. Construction, operation, and maintenance of the proposed project shall be in accordance with the plans and representations as submitted in this proceeding. Any material deviation from these plans must be approved by the Board.
4. Blasting associated with construction of the proposed project shall be minimized to the extent practicable and performed only during the hours of 9:00 A.M.- 5:00 P.M., Monday-Friday, with the exception of State holidays.
5. All blasting shall be carried out by licensed and certified blasting technicians. All blasting shall be performed in accordance with any and all applicable laws and regulations,

including, but not limited to, U.S. Department of Interior Rules 816.61-68 and 817.61-68 and the Blasting Guidance Manual, Office of Surface Mining, Reclamation and Enforcement, U.S. Department of Interior to limit peak particle velocity and ground vibration to safe levels. Noise and air blast effects shall be limited through application of proper techniques and blasting mats shall be used where needed to limit the occurrence of flyrock.

6. Prior to performing any blasting for the proposed project, CVPS shall offer to any residents or owners of dwellings or other structures a preconstruction survey of residential and agricultural water sources, dwellings, and other structures, within one-half mile of the proposed blasting site, and shall arrange for a public information session with surrounding landowners to address concerns related to blasting.

7. CVPS shall, at a minimum, send a certified letter, return receipt requested, to each property owner within one-half mile of the project site. Each letter shall explain why pre- and post-blast surveys of water sources and other structures are being offered and provide contact information for a person who can answer questions that property owners may have regarding both the notices and the surveys. Copies of the return receipts are to be filed with the Board.

8. In the event surrounding landowners express concern regarding the impacts of blasting on wells or other structures on their property, CVPS shall perform evaluations to determine if any damage has occurred as a result of blasting activities and, if so, remediate any such damage.

Dated at Montpelier, Vermont, this 23rd day of November, 2011.

<u>s/ James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/ David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/ John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: November 23, 2011

ATTEST: s/ Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*